No. 78-1739

In The Supreme Court of the United States

OCTOBER TERM, 1978

GEORGE PETTUS, PETITIONER

v.

AMERICAN AIRLINES, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

CARIN ANN CLAUSS
Solicitor of Labor

LAURIE M. STREETER
Associate Solicitor

JOSHUA T. GILLELAN, II
Attorney
Department of Labor
Washington, D.C. 20210

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v.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) and its addendum on denial of rehearing (Pet. App. 18a-20a) are reported at 587 F.2d 627. The opinions of the Department of Labor Benefits Review Board (Pet. App. 21a-26a; App. A, *infra*, 1a-5a) are reported at 6 BRBS 461 and 3 BRBS 315. The opinions of the administrative law judges (Pet. App. 28a-41a; Br. in Opp. App. 1a-13a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 26, 1978. Petitions for rehearing filed by petitioner and the Director of the Department of La-

bor's Office of Workers' Compensation Programs were denied on January 4, 1979 (Pet. App. 18a–19a). Petitioner Pettus and the Director filed second petitions for rehearing, which were denied on the merits on March 14, 1979 (App. B, *infra*, 6a–7a). The petition for a writ of certiorari was filed on May 18, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Full Faith and Credit Clause bars an award of workers' compensation in one jurisdiction following an award in another jurisdiction whose statute provides, in general terms, that the benefits it confers are exclusive.

2. Whether a determination by the Virginia Industrial Commission that petitioner's refusal to undergo surgery warranted termination of his benefits under Virginia law bars a contrary determination by the Department of Labor under the different substantive and procedural standards of the Longshoremen's and Harbor Workers' Compensation Act.

STATEMENT

Petitioner, a resident of the District of Columbia, was hired in the District in 1969 by respondent American Airlines, Inc.[1] He worked for respondent at National Airport in Virginia until May 1972, when he injured his back during the course of his employment. For the next year, respondent paid petitioner disability compensation under an award by the Virginia Industrial Commission (Pet. App. 2a).

[1] Commercial Insurance Company of Newark, New Jersey, is also a respondent to these proceedings. As used in this brief, however, "respondent" refers solely to American Airlines, petitioner's employer.

When petitioner's back failed to improve despite traction, exercises and heat treatments, he discussed the possibility of spinal surgery with his doctor (Pet. App. 32a). Petitioner declined to undergo surgery for a number of reasons, including an asthmatic condition that could render anesthesia dangerous, the substantial possibility (confirmed by discussions with other patients) that the operation would not succeed, the prior unexpected death of his wife at a hospital, and the need to care for his two young children (*id.* at 33a). On the basis of petitioner's refusal to undergo surgery, respondent terminated its workers' compensation payments. That action was sustained by the Virginia Industrial Commission on the basis of a state statute requiring termination of the payment of compensation to any injured employee who, without justification, refuses recommended surgical treatment (Br. in Opp. App. 14a–17a). See Va. Code § 65.1–88. Subsequent to the termination, petitioner's sole source of support for himself and his family was public assistance payments provided by the District of Columbia (Pet. App. 34a).

On June 28, 1974, petitioner filed a claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, as made applicable to the District of Columbia by 36 D.C. Code 501 (1967). Although his claim was initially denied for lack of statutory coverage, the Department of Labor's Benefits Review Board reversed the order denying benefits, holding that the District of Columbia had a substantial interest in assuring that petitioner received adequate compensation and that the prior award under Virginia law did not preclude additional relief on grounds of full faith and credit, res judicata, or collateral estoppel (App. A, *infra*, 1a–5a). In concluding that a successive award would not offend the Full Faith and Credit Clause (art. IV, § 1; see also 28 U.S.C. 1738), the Benefits Review Board relied primarily on this Court's decision in *Industrial Commission* v. *McCartin*, 330 U.S. 622 (1947). The Board remanded the case

for further proceedings to determine whether petitioner's refusal to undergo surgery should disqualify him for benefits under Section 7(d) of the Longshoremen's Act, 33 U.S.C. 907(d).

The administrative law judge held on remand that petitioner's refusal to undergo surgery did not disqualify him for benefits because it was not unreasonable or unjustified under the circumstances (Pet. App. 28a-41a). The Benefits Review Board affirmed that determination, pointing out that the Virginia Industrial Commission's ruling that petitioner's rights were suspended under state law was not conclusive on the question whether petitioner was similarly disqualified under the federal statute. The Board noted that the state and federal laws differed in the substantive standards for disqualification, the burden of proof, and the discretionary authority of the administrator to require continuation of payments (*id.* at 21a-26a).

The court of appeals reversed, one judge dissenting (Pet. App. 1a-17a). Although the court agreed that the federal statute applied to petitioner (Pet. App. 3a), it held that the prior proceedings before the Virginia Industrial Commission barred petitioner's claim for compensation under federal law. The court believed that the present case was governed by *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430 (1943), rather than this Court's later decision in *McCartin* (Pet. App. 6a-10a). The court also concluded that the issues before the Virginia Industrial Commission were substantially identical to those presented in the federal forum and that principles of res judicata and collateral estoppel therefore applied (Pet. App. 3a-4a).

Judge Hall dissented. In his view, *McCartin*, rather than *Magnolia*, was controlling and required affirmance of the Benefits Review Board. Moreover, Judge Hall found no basis for invoking rules of collateral estoppel or res judicata, noting material differences in the substantive standards and procedures prescribed under the federal and state statutes (Pet. App. 11a-17a).

On petitions for rehearing, the panel majority distinguished the decision of another panel in *Newport News Shipbuilding & Dry Dock Co.* v. *Director*, 583 F.2d 1273 (4th Cir. 1978), which had approved a workers' compensation award under the Longshoremen's Act after a denial of compensation under Virginia law. The court reasoned that, in *Newport News*, the claimant had been denied all benefits on jurisdictional grounds, whereas petitioner had received compensation for a year under Virginia law (Pet. App. 19a-20a).[2]

Petitioner and the federal respondent subsequently filed renewed petitions for rehearing, addressed in part to the court's attempted distinction of *Newport News*. Those petitions were denied by the court as "without merit" (App. B, *infra*, 6a-7a).

ARGUMENT

The decision of the court of appeals conflicts with this Court's decision in *Industrial Commission* v. *McCartin*, *supra*, and numerous state supreme court decisions holding that an award of workers' compensation benefits under the law of one jurisdiction does not preclude a supplemental or successive award under the law of another, despite the existence of general language in

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[2] In its opinion denying rehearing, the court of appeals placed exclusive reliance on the fact that petitioner had received an award under Virginia law, without further discussion of the collateral estoppel or res judicata issues. The court of appeals thus appears to believe that a mere award under Virginia law, regardless of whether it has been terminated, is sufficient to preclude the payment of benefits under the Longshoremen's Act. On the sole authority of its decision in the present case, the court subsequently reversed another award under the Longshoremen's Act where the claimant was still receiving compensation pursuant to Virginia law. *Washington Gas Light Co.* v. *Thomas*, No. 78-1261 (4th Cir. Apr. 27, 1979) (unpublished decision). Thus, the court of appeals apparently views the award of benefits in Virginia as the dispositive factor.

the law of the first jurisdiction purporting to create an exclusive remedy. The decision of the court of appeals also misapplies principles of res judicata and collateral estoppel to bar petitioner's claim. Because the court below has misconstrued *McCartin* in a manner that creates substantial uncertainties in the administration of the Longshoremen's and Harbor Workers' Compensation Act, we believe that the Court should grant the petition for certiorari.

1. The private respondents contend (Br. in Opp. 4-5) that the petition for certiorari was not timely filed. However, the petition was filed within 90 days of the court of appeals' denial of the second petitions for rehearing. See 28 U.S.C. 2101(c); *Department of Banking* v. *Pink*, 317 U.S. 264 (1942). As the Court remarked in *Bowman* v. *Loperena*, 311 U.S. 262, 266 (1940) (footnote omitted):

> The filing of an untimely petition for rehearing which is not entertained or considered on its merits, or a motion for leave to file such a petition out of time, if not acted on or if denied by the trial court, cannot operate to extend the time for appeal. But where the court allows the filing and, after considering the merits, denies the petition, the judgment of the court as originally entered does not become final until such denial, and the time for appeal runs from the date thereof.

These principles are equally applicable to a petition for certiorari following the denial of rehearing by the court of appeals. See *Gypsy Oil Co.* v. *Escoe*, 275 U.S. 498, 499 (1927); R. Stern & E. Gressman, *Supreme Court Practice* 399 (5th ed. 1978).

Here, the court of appeals treated the second petitions for rehearing (which were addressed in substantial part to the new rationale added to the court's opinion at the time the first petitions for rehearing were

denied)[3] as properly before it, and it denied those petitions on the merits (App. B, *infra*, 6a-7a). Indeed, one of the three judges on the panel voted to grant the second petitions for rehearing. Because the court did not dismiss the petitions on procedural grounds, the time to seek certiorari was tolled while the court considered them on the merits and commenced to run only after they were finally denied.[4]

2. In *Industrial Commission* v. *McCartin*, *supra*, the Court considered the question whether an award of workers' compensation under Illinois law precluded additional workers' compensation benefits under Wisconsin law as a result of the operation of the Full Faith and Credit Clause. After observing that the answer depended solely upon whether "the Illinois award was intended to be final and conclusive of all the employee's rights against the employer and the insurer growing out of the injury" (330 U.S. at 626), the Court found no such preclusive effect, holding that "an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state" (*id.* at 630).

The Court reached that conclusion even though the Illinois compensation statute provided that remedies

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[3] In denying the first petitions for rehearing, the court of appeals added an addendum to its opinion explaining an alleged inconsistency with *Newport News Shipbuilding & Dry Dock Co.* v. *Director*, *supra*. The second petitions attempted to show that the new rationale in the court's addendum was erroneous and, indeed, exacerbated rather than eliminated the intra-circuit conflict with *Newport News*. This development, which obviously could not have been addressed in the initial rehearing petitions, plainly warranted new petitions for rehearing, with suggestions of rehearing en banc.

[4] If the court of appeals had dismissed the second petitions on the basis of procedural defects or otherwise refused to consider them on the merits, the time to petition for certiorari would have run from the denial of the first petitions for rehearing. See *Morse* v. *United States*, 270 U.S. 151 (1926).

under it were exclusive: "No common law or statutory right to recover damages for injury or death sustained by any employe * * * other than the compensation herein provided, shall be available to any employe who is covered by the provisions of this act * * *" (330 U.S. at 627, quoting Ill. Rev. Stat., ch. 48, § 6 (1943)). The Court reasoned that this language was intended to provide exclusive remedies only in the sense that it precluded supplemental common law or statutory remedies under Illinois law. However, the Court found "nothing in the [Illinois] statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of Illinois employment" (*id.* at 627-628). It added:

> [I]n light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, we should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction.

Id. at 628 (citations omitted).[5]

Neither the court of appeals nor respondent has identified any "unmistakable language" purporting to make the Virginia statute preclusive of remedies in other states or under the Longshoremen's Act. The court below simply relied on a general exclusivity provision in the Virginia statute substantially identical to that in-

[5] *McCartin* distinguished the Court's prior holding in *Magnolia Petroleum Co.* v. *Hunt*, *supra*, on the ground that in *Magnolia* the state statute, as construed by the state courts, provided remedies "explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state." 330 U.S. at 626.

volved in *McCartin*. The statute provides workers' compensation in lieu of other rights and remedies "at common law or otherwise" (Va. Code § 65.1-40); while this may preclude a claimant from suing his employer in Virginia, there is no reason to assume that it was meant to extinguish whatever remedies an employee might have elsewhere. Hence, as Judge Hall remarked in dissent (Pet. App. 14a), "the majority ignores the mandate of the *McCartin* court * * * to read total exclusivity into the silent Virginia statute."

The court of appeals' conclusion that petitioner is not entitled to relief is inconsistent not only with the approach of *McCartin* but also with the decisions of the highest courts of a number of states, which have applied the *McCartin* principle despite the existence of language in a workers' compensation statute of a sister state purporting to grant exclusive relief. Such language has uniformly been held to refer only to other remedies available under the law of the state granting the original award. See, *e.g.*, *Reynolds Electrical & Engineering Co.* v. *Workmen's Compensation Appeals Board*, 55 Cal. 248, 421 P. 2d 96 (1966) (prior Nevada award not exclusive of California supplemental award); *Griffin* v. *Universal Underwriters Insurance Co.*, 283 So.2d 748 (La. 1973), cert. denied, 416 U.S. 904 (1974) (prior Texas award and subsequent judgment suspending benefits under it not exclusive of Louisiana supplemental award); *Wood* v. *Aetna Casualty & Surety Co.*, 260 Md. 651, 273 A.2d 125 (1971) (Maryland award is not exclusive of additional award under another jurisdiction's compensation law); *Stanley* v. *Hinchliffe & Kenner*, 395 Mich. 645, 238 N.W.2d 13 (1976) (prior California award not exclusive of Michigan supplemental award); *Cook* v. *Minneapolis Bridge Construction Co.*, 231 Minn. 433, 43 N.W.2d 792 (1950) (prior North Dakota award not exclusive of Minnesota supplemental award); *Cramer* v. *State Concrete Corp.*, 39 N.J. 507, 189 A.2d 213 (1963) (prior New York award not exclu-

sive of New Jersey supplemental award).[6] Cf. *Umbehagen* v. *Equitable Equipment Co.*, 329 So.2d 245, 251 (La. App. 1976) (Longshoremen's Act not exclusive of state workers' compensation remedies).

Against all of this authority, the sole precedent relied on by the court of appeals (Pet. App. 9a) is *Gasch* v. *Britton*, 202 F.2d 356 (D.C. Cir. 1953), which held that relief granted under a Maryland workers' compensation statute was preclusive of remedies in other jurisdictions. But the decision in *Gasch* adds little weight to the court's conclusion, because it failed to employ the "unmistakable language" standard required by *McCartin*. Moreover, the *Gasch* court's interpretation of Maryland law as having preclusive effect has since been corrected by the courts of that state, on the basis of *McCartin*. See *Wood* v. *Aetna Casualty & Surety Co.*, *supra*. And the suggestion in *Gasch* that this Court's opinion in *Magnolia*, rather than *McCartin*, provides primary guidance in workers' compensation cases has

[6] Accord, *Jordan* v. *Industrial Commission*, 117 Ariz. 215, 571 P.2d 712 (Ariz. App. 1977); *City Products Corp.* v. *Industrial Commission*, 19 Ariz. App. 286, 506 P.2d 1071 (1973); *Agee* v. *Industrial Commission*, 10 Ariz. App. 1, 455 P.2d 288 (1969); *McGehee Hatchery Co.* v. *Gunter*, 234 Ark. 113, 350 S.W.2d 608 (1961); *Industrial Indemnity Exchange* v. *Industrial Accident Commission*, 80 Cal. App.2d 480, 182 P.2d 309, 312 (1947); *Industrial Track Builders* v. *Lemaster*, 429 S.W.2d 403 (Ky. 1968); *Ryder* v. *Insurance Co. of North America*, 282 So.2d 771 (La. App. 1973); *Lavoie's Case*, 334 Mass. 403, 135 N.E.2d 750, 753–754 (1956); *Hubbard* v. *Midland Constructors, Inc.*, 269 Minn. 425, 131 N.W.2d 209, 211 n.1 (1964); *Sorenson* v. *Standard Construction Co.*, 238 Minn. 68, 55 N.W.2d 630 (1952); *Harrison Co.* v. *Norton*, 244 Miss. 752, 146 So.2d 327 (1962); *Nevada Industrial Commission* v. *Underwood*, 79 Nev. 496, 387 P.2d 663 (1963); *Bekkedahl* v. *North Dakota Workmen's Compensation Bureau*, 222 N.W. 2d 841 (N. Dak. 1974); *Spietz* v. *Industrial Commission*, 251 Wis. 168, 28 N.W.2d 354 (1947). Cf. *Sade* v. *Northern Natural Gas Co.*, 458 F.2d 210, 215 (10th Cir. 1972) (Oklahoma award not exclusive of remedies under other jurisdictions' laws).

been abandoned in more recent decisions of the District of Columbia Circuit. See *Semler* v. *Psychiatric Institute*, 575 F.2d 922, 930 n.41 (1978); *Director, Office of Workers' Compensation Programs* v. *Boughman*, 545 F.2d 210, 211 (D.C. Cir. 1976), aff'g 1 BRBS 406 (1975) (award under the Longshoremen's Act not precluded by a prior award under state law).

3. The court of appeals also erred in concluding that principles of res judicata and collateral estoppel bar petitioner's claim under the Longshoremen's Act (Pet. App. 4a–5a). The court reasoned that Virginia's determination that petitioner had unjustifiably refused to undergo surgery precluded his claim under the federal statute, which also denies relief under some circumstances if surgery is refused. However, there are material differences between the Virginia and federal statutes, and these differences undermine the court of appeals' analysis.

Under the Longshoremen's Act (33 U.S.C. 907(d)), the Department of Labor "may" suspend payment of benefits if the employee "unreasonably" refuses to submit to surgery, "unless the circumstances justified the refusal." By contrast, the Virginia statute (Va. Code § 65.1–88) provides that the Industrial Commission "shall" terminate benefits unless "the circumstances justified the refusal." As Judge Hall noted in dissent (Pet. App. 16a–17a), the standards set forth in the federal statute are substantially more favorable to the claimant. The Department of Labor is prohibited from terminating payments if *either* the decision to decline surgery was not unreasonable *or* the circumstances justified the refusal.[7] Under the Virginia stat-

[7] The Department of Labor applies these terms liberally. Refusal to undergo surgery is deemed to be reasonable if it poses a significant danger to life or entails a substantial measure of pain without a reasonable likelihood of alleviating the worker's disability. See generally 1 A. Larson, *The Law of Workmen's Compensation* § 13.22 (1979). Petitioner's doctors anticipated a continuing permanent impairment of 25% even if his spinal surgery

ute, the sole criterion is whether the refusal was justified. More important, the termination of benefits under the federal standard is discretionary. Even if a refusal to undergo surgery is unreasonable and unjustified by the circumstances, the Secretary retains the discretion to require the employer to continue payments. Under the Virginia statute, the termination of benefits is mandatory.

Finally, under the Virginia statute, the claimant bears the burden of persuasion by a preponderance of the evidence on all elements of his claim. See *Newport News Shipbuilding & Dry Dock Co.* v. *Director, supra*, 583 F.2d at 1278–1279. Under the Longshoremen's Act, by contrast, all doubtful questions are resolved in favor of the claimant as the party least likely to be able to bear the burden of an error. See, *e.g.*, *Swinton* v. *J. Frank Kelly, Inc.*, 554 F.2d 1075, 1084 (D.C. Cir.), cert. denied, 429 U.S. 820 (1976); *Young & Co.* v. *Shea*, 397 F.2d 185, 188–189 (5th Cir. 1968), cert. denied, 395 U.S. 920 (1969). In practical effect, this places the burden of persuasion on the employer contesting the payment of benefits.

Judge Hall correctly concluded in his dissenting opinion (Pet. App. 14a–17a) that principles of collateral estoppel and res judicata are inapplicable under these circumstances. Res judicata does not apply because the Virginia proceeding only resolved petitioner's rights under Virginia law. It could not, and did not purport to, resolve petitioner's entitlement to benefits under Dis-

were successful (Pet. App. 36a). That continuing impairment would serve as a substantial impediment to future employment, in light of petitioner's past work record as a manual laborer (*id.* at 31a). Moreover, petitioner feared that the operation might be fatal because of his severe asthma condition, and he was unwilling to run that risk because he was the sole support of his two young children (*id.* at 33a). The Virginia tribunal considered none of these factors. It simply noted that "[t]he fact that the physician cannot guarantee a risk-free operation or certain attainment of full recovery does not render such a refusal justified" (Br. in Opp. App. 17a).

trict of Columbia law. By the same token, collateral estoppel does not apply because the Virginia proceeding only determined that petitioner's refusal to undergo surgery was unjustified under the standards of that state's statute. It did not determine whether petitioner's conduct was "reasonable," an independent basis for ruling in petitioner's favor under the federal statute. And, of course, Virginia could not determine whether the Secretary of Labor should exercise his discretion in favor of continuation of benefits. Thus, the proceeding in Virginia was not dispositive of petitioner's rights under the Longshoremen's Act.[8]

4. The court of appeals' decision has created uncertainty in the administration of the Longshoremen's Act in the District of Columbia and elsewhere. We have been informed by the Department of Labor that some employers are no longer complying with the requirements of the Longshoremen's Act that they report injuries (33 U.S.C. 930) and institute payments without a formal award except where specific grounds for denial of liability are asserted (33 U.S.C. 914). This has resulted from the Fourth Circuit's holding that a prior award under state law will preclude supplemental federal remedies; employers now attempt to avoid Longshoremen's Act liability by entering into undisputed awards under state law.

The question presented is a recurring one. In light of the conflict with *McCartin* and numerous state court decisions and the practical importance of the court of appeals' decision, review by this Court is warranted.

[8] Collateral estoppel applies only to "the question expressly and definitely presented * * * and actually litigated and adjudged" in the former proceeding. *Montana* v. *United States*, No. 77–1134 (Feb. 22, 1979), slip op. 9; see also *id.* at 7; *Parklane Hosiery Co., Inc.* v. *Shore*, No. 77–1305 (Jan. 9, 1979), slip op. 3–4 (collateral estoppel prevents litigants from "relitigating an identical issue").

CONCLUSION

The petition for a writ of certiorari should be granted. The Court may wish to consider summary reversal in light of *Industrial Commission* v. *McCartin*, 330 U.S. 622.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

CARIN ANN CLAUSS
Solicitor of Labor

LAURIE M. STREETER
Associate Solicitor

JOSHUA T. GILLELAN, II
Attorney
Department of Labor

AUGUST 1979

APPENDIX A

U.S. DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD
WASHINGTON, D.C. 20210

GEORGE PETTUS, CLAIMANT-PETITIONER

v.

AMERICAN AIRLINES, INC. and COMMERCIAL INSURANCE CO. OF NEWARK, NEW JERSEY, EMPLOYER/CARRIER-RESPONDENTS

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

BRB Nos. 75-197 and 75-197A

DECISION

Appeal from Decision and Order of Samuel J. Smith, Administrative Law Judge, United States Department of Labor.

Before: Washington, Chairperson, Hartman and Miller, Members.

Miller, Member:

These are appeals by the Director, Office of Workers' Compensation Programs, and the claimant from the Decision and Order (75-DCWC-19) of Administrative Law Judge Samuel J. Smith denying compensation under the Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* as extended to the District of Columbia, 36 D.C. Code §501, *et seq.* (hereinafter referred to as the Act).

The claimant is a resident of the District of Columbia and a former employee of American Airlines. He was working at National Airport in nearby Virginia when he injured his back within the scope of his employment. The claimant was initially awarded compensation under the Virginia workmen's compensation statute. Such payments were terminated in May of 1973 and in June of 1974 the claimant filed a claim under the Act. The administrative law judge denied compensation under the Act on the basis of lack of jurisdiction over the claim.

The issue on appeal is whether contacts among and between the employee, employer and the District of Columbia are sufficient to warrant application of the Act.

The Board has had occasion to consider the applicability of the Act to injuries occurring outside the District of Columbia. *Ekar v. International Union of Operating Engineers*, 1 BRBS 406, BRB Nos. 74-209 and 74-209A (April 30, 1975); *Riley v. Eureka Van & Storage Co.*, 1 BRBS 449, BRB No. 74-155 (May 6, 1975); *Del Borrell v. REA Express*, 2 BRBS 344, BRB No. 74-131 (Oct. 8, 1975). In those cases, the inquiry of the Board was directed to determination of whether the District of Columbia had sufficient legitimate interest in an extra-territorial employment-related injury in order to permit application of the Act.

The Board, in applying the Act in the cases cited above, relied, in part, on the several substantial contacts of the employee, employer, and the District enumerated by the United States Supreme Court in *Cardillo v. Liberty Mutual Insurance Co.*, 320 U.S. 469 (1947). In *Cardillo*, the Court set forth circumstances to be considered in determining substantial contacts such as the employee's residence, employer's place of business, the employer's principal area of operations, the place of contract of hire, the employee's principal place of employment over a period of years, the place from which the employee received direction concerning

his work while employed outside the District, whether the employee was subject to transfer back to the District, the place the employee was paid from, and whether the employee received a travel expense allowance from the District.

The Supreme Court, however, did not require a finding that any particular quantity of those substantial contacts enumerated be present in order to find jurisdiction. Thus, the Board held, in each of the cases cited above, that there were substantial contacts present sufficient to establish a legitimate interest by the District in extending the Act's coverage to the claimants involved in those cases.

Examining the record herein, the Board notes that the claimant resided in the District and was recruited for employment in the District. The employer maintained a sales office in the District at which 35 people were employed including a vice-president and director of public relations and also maintained two ticket offices in the District.

The administrative law judge concluded that in comparing the substantial contacts set forth in *Cardillo*, with the contacts herein, the claimant's business and personal connections with the District of Columbia were too remote to vest jurisdiction under the Act. We disagree.

We do not consider it essential that the number of substantial contacts in a particular case be measured against those possible contacts that the Supreme Court set forth in *Cardillo v. Liberty Mutual Insurance Co.*, *supra*. As the court recognized, the Act applies to every employee of an employer carrying on employment in the District, no matter where the injury occurs. Therefore, upon a literal reading of the Act, the claimant herein, an employee of an employer carrying on employment in the District by virtue of its sales and ticket offices therein, would be covered without any further findings. However, in *Ekar v. International Union of Operating Engineers*, *supra*, we held that

such interpretation leads to unreasonable results and construed the Act as a local statute enacted under Congressional jurisdiction to provide for the general welfare of citizens within the District.

As the claimant herein resides in the District, and could become a public charge therein, the District has a legitimate and compelling interest to protect not only the claimant injured in the course of employment, but all of its residents who may be affected if the claimant is inadequately compensated for injury thereby necessitating public assistance.

The employer, however, asserts that because the claimant chose to accept benefits under the laws of Virginia, he is thereby precluded from seeking compensation under the laws of another jurisdiction. It asserts that the finding of the Industrial Board of Virginia, the claimant is not entitled to any further compensation, is a final decision under Virginia law and therefore *res judicata*. It alleges that if any additional award were made by the District of Columbia, it would be violative of the Full Faith and Credit clause of the United States Constitution. U.S. Const. Art 4, §1.

The decision by the Virginia Industrial Commission is final only in that the claimant is not entitled to further compensation under Virginia law. However, the Virginia compensation statue is not exclusive and does not preclude recovery for injuries under the District of Columbia Act.

In situations where the workmen's compensation law of a state does not contain an explicit prohibition against seeking additional or alternative relief under the laws of another jurisdiction, the Supreme Court has sanctioned the granting of successive awards, subject to crediting the liable party with amounts paid pursuant to the initial award. *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622 (1947); *see also Ekar v. International Union of Operating Engineers, supra*. Each state is prima facie entitled to enforce in its own courts its own lawfully enacted statutes. *Alaska Meat-*

packers Association v. Industrial Accident Commission of California, 294 U.S. 532 (1934). It is therefore proper for the District of Columbia to exercise its concurrent jurisdiction in this case.

We hold that the fact that the claimant is a resident of the District of Columbia is sufficient to confer jurisdiction under the Act. We further hold that a prior award by the State of Virginia does not preclude a subsequent award under the Act.

We therefore remand this case for a determination in accordance with this Decision.

We Concur:
/s/Julius Miller, Member
Ruth V. Washington, Chairperson
Ralph M. Hartman, Member

Dated this 19th day of March 1976

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 77-2230

GEORGE PETTUS, CLAIMANT-RESPONDENT

v.

AMERICAN AIRLINES, INC., EMPLOYER,
AND COMMERCIAL INSURANCE COMPANY OF NEWARK,
NEW JERSEY, CARRIER-PETITIONERS

DIRECTOR, OFFICE OF WORKERS' COMPENSATION
PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,
RESPONDENT

ORDER

George Pettus, the claimant, and the Director, Office of Workers' Compensation Programs, United States Department of Labor, petitioned for rehearing or rehearing en banc, which petitions were denied by order filed January 4, 1979.

Pettus and the Director have filed second petitions for rehearing or rehearing en banc, Pettus' being filed January 16, 1979 and the Director's being filed January 18, 1979.

No judge qualified so to do has requested a poll of the court on the suggestions for rehearing en banc.

It is accordingly ADJUDGED and ORDERED that the petitions for rehearing en banc shall be, and they hereby are, denied.

The panel has considered the petitions for rehearing and is of the opinion they are without merit.

It is accordingly ADJUDGED and ORDERED that the petitions for rehearing shall be, and they hereby are, denied.

With the concurrence of Judge Bryan.

Judge Hall dissents. He would affirm the award.